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11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

13 In re
14 THE SOURCE HOTEL, LLC,
15
16 Debtor.

Case No. 8:21-bk-10525-ES

Chapter 11

**STIPULATION BETWEEN DEBTOR AND
SHADY BIRD LENDING, LLC RE
PENDING MOTION OF SHADY BIRD
LENDING, LLC FOR ORDER EXCUSING
STATE COURT RECEIVER FROM
TURNOVER OF ASSETS PURSUANT
TO 11 U.S.C. § 543**

DATE:
TIME: [No Hearing Required]
PLACE:

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
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1 **WHEREAS**, Shady Bird Lending, LLC (“Shady Bird”) is the holder of the
2 senior deed of trust on the real property bearing APN Nos. 276-361-20 and 276-361-22,
3 consisting of a partially constructed 178-room, seven story hotel building located in
4 Buena Park, California (the “Property” or “Project”) owned by the debtor and debtor in
5 possession The Source Hotel, LLC (the “Debtor”).

6 **WHEREAS**, on February 8, 2021, Shady Bird caused to be filed a
7 complaint against the Debtor in the Superior Court of the State of California for the
8 County of Orange (the “Superior Court”) for (i) specific performance and appointment of a
9 receiver, and (ii) waste, thereby commencing the Superior Court action bearing Case No.
10 30-2021-01183489-CU-OR-CJC (the “State Court Action”).

11 **WHEREAS**, shortly after filing the State Court Action, Shady Bird caused to
12 be filed, among other things, its “Ex Parte Application for: (1) Order Appointing Receiver;
13 (2) Temporary Restraining Order; and (3) Order to Show Cause Re: Confirmation of
14 Appointment of Receiver and Preliminary Injunction in Aid of Receiver; Memorandum of
15 Points and Authorities in Support Thereof” (the “Receivership Application”).

16 **WHEREAS**, on February 17, 2021, the Superior Court granted the
17 Receivership Application and entered its “Ex Parte Order Appointing Receiver and Order
18 to Show Cause and Temporary Restraining Order – Rents, Issues, and Profits” (the
19 “Receivership Order”), pursuant to which, among other things, Bellann R. Raile (the
20 “Receiver”) was appointed receiver for the Project.

21 **WHEREAS**, in addition to the Receivership Order, a foreclosure sale was
22 scheduled for March 1, 2021.

23 **WHEREAS**, on February 26, 2021 (the “Petition Date”), the Debtor filed a
24 voluntary petition for relief under title 11 of the United States Code, commencing this
25 chapter 11 case.

26 **WHEREAS**, the Debtor has sent a demand to Shady Bird demanding,
27 among other things, that the Receiver (i) deliver any property of the Debtor held by or
28 transferred to the Receiver, or the proceeds, product, offspring, rents, or profits of such

1 property, that is in the Receiver's possession, custody, or control, and (ii) file an
2 accounting of any property of the Debtor, or proceeds, product, offspring, rents, or profits
3 of such property, that, at any time, came into the possession, custody, or control of the
4 Receiver, pursuant to 11 U.S.C. § 543(b).

5 **WHEREAS**, pursuant to Section 27(b) of the Receivership Order, Shady
6 Bird has ten (10) court days from the date it received notice of the bankruptcy filing to file
7 a motion to excuse the Receiver's compliance with 11 U.S.C. § 543.

8 **WHEREAS**, after its receipt of the Debtor's demand, Shady Bird advised
9 the Debtor that it intended to file (i) a motion for an order excusing the Receiver from the
10 requirements of 11 U.S.C. § 543 (the "Excuse Compliance Motion"), and (ii) a motion for
11 an order designating the Debtor's chapter 11 case as a single asset real estate case
12 pursuant to 11 U.S.C. §§ 101(51B) and 362(d)(3) (the "SARE Motion").

13 **WHEREAS**, since, pursuant to Section 27(b) of the Receivership Order, the
14 last day to file the Excuse Compliance Motion is March 12, 2021, Shady Bird advised the
15 Debtor that it intended to file the Excuse Compliance Motion and SARE Motion on March
16 11, 2021, with a scheduled hearing dated of April 1, 2021.

17 **WHEREAS**, the Debtor advised Shady Bird that, due to a scheduling
18 conflict with counsel, it is requesting that Shady Bird agree to set the hearings for its
19 Excuse Compliance Motion and SARE Motion to a date on or after April 15, 2021.

20 **WHEREAS**, Shady Bird has consented to the Debtor's request, and has
21 agreed to schedule the Excuse Compliance Motion and SARE Motion for a date available
22 on the Court's calendar on or after April 15, 2021, without prejudice or argument for
23 timeliness, provided, however, that the Debtor and Shady Bird agree that (i) the Receiver
24 shall be excused from complying with the turnover requirements of 11 U.S.C. § 543
25 pending a hearing on the Excuse Compliance Motion and SARE Motion, (ii) the
26 Receivership Order shall remain in full force and effect pending a hearing on the Excuse
27 Compliance Motion and SARE Motion and the Debtor shall not interfere with the Receiver
28 or the Receivership Order pending the resolution of the Excuse Compliance Motion, (iii)

1 the Excuse Compliance Motion shall be deemed timely pursuant to the Receivership
2 Order if it is filed after March 12, 2021, (iv) the Debtor shall be prohibited from raising
3 timeliness as a basis to deny the Excuse Compliance Motion, and (v) the Debtor shall not
4 be deemed to have waived any of its objections or defenses with respect to the Excuse
5 Compliance Motion and SARE Motion, or any issues raised by the Excuse Compliance
6 Motion and SARE Motion, by entering into this Stipulation.

7 **NOW, THEREFORE**, in consideration of the foregoing, the parties hereto,
8 by and through their respective attorneys of record, hereby agree and stipulate as
9 follows:

10 1. Pending a hearing on Shady Bird's Excuse Compliance Motion and
11 SARE Motion, the Receiver shall be excused from complying with the turnover
12 requirements of 11 U.S.C. § 543.

13 2. Pending a hearing on Shady Bird's Excuse Compliance Motion and
14 SARE Motion, the Receivership Order shall remain in full force and effect and the Debtor
15 shall not interfere with the Receiver or the Receivership Order pending the resolution of
16 the Excuse Compliance Motion.

17 3. Shady Bird's Excuse Compliance Motion shall be deemed timely
18 pursuant to the Receivership Order if it is filed after March 12, 2021.

19 4. The Debtor shall be prohibited from raising timeliness as a basis to
20 deny the Excuse Compliance Motion.

21 5. The Debtor shall not be deemed to have waived any of its objections
22 or defenses with respect to the Excuse Compliance Motion and SARE Motion, or any
23 issues raised by the Excuse Compliance Motion and SARE Motion, by entering into this
24 Stipulation.

25 DATED: March 11, 2021

SulmeyerKupetz
A Professional Corporation

27 By: /s/ Daniel A. Lev

28 Daniel A. Lev
Attorneys for Shady Bird Lending, LLC

SulmeyerKupetz, A Professional Corporation
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1 DATED: March 11, 2021

Law Offices of Ronald Richards & Associates, APC

3 By: /s/ Ronald Richards

4 Ronald Richards

Attorneys for Shady Bird Lending, LLC

6 DATED: March 11, 2021

Levene, Neale, Bender, Yoo & Brill L.L.P.

7 

9 By: _____

Ron Bender

Juliet Y. Oh

(Proposed) Attorneys for The Source Hotel,
LLC, Debtor and Debtor in Possession

12 **AUTHORIZATION OF E-SIGNATURES**

14 The filing party hereby attests that all signatories listed concur in this filing's
15 content and have authorized this filing with e-signatures

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **STIPULATION BETWEEN DEBTOR AND SHADY BIRD LENDING, LLC RE PENDING MOTION OF SHADY BIRD LENDING, LLC FOR ORDER EXCUSING STATE COURT RECEIVER FROM TURNOVER OF ASSETS PURSUANT TO 11 U.S.C. § 543** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) March 11, 2021 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 11, 2021

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Ron Bender on behalf of Debtor The Source Hotel, LLC
rb@lnbyb.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
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